

## NOTICES OF EXEMPT RULEMAKING

The Administrative Procedure Act requires the *Register* publication of the rules adopted by the state's agencies under an exemption from all or part of the Administrative Procedure Act. Some of these rules are exempted by A.R.S. §§ 41-1005 or 41-1057; other rules are exempted by other statutes; rules of the Corporation Commission are exempt from Attorney General review pursuant to a court decision as determined by the Corporation Commission.

### NOTICE OF EXEMPT RULEMAKING

#### TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES REGULATION

##### CHAPTER 2. CORPORATION COMMISSION

##### FIXED UTILITIES

##### PREAMBLE

1. **Sections Affected**

<u>Sections Affected</u>	<u>Rulemaking Action</u>
Article 15	New Article
R14-2-1501	New Section
R14-2-1502	New Section
R14-2-1503	New Section
R14-2-1504	New Section
R14-2-1505	New Section
R14-2-1506	New Section
R14-2-1507	New Section
R14-2-1508	New Section
R14-2-1509	New Section
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. §§ 40-107, 40-202, 40-203, 40-204, 40-233, 40-281, 40-282, 40-321, 40-336, 40-361, 40-365, and 40-421.

Constitutional authority: Arizona Constitution, Article 15, Sections 1, 2, 3, 4, 6, 7, and 9

Implementing statute: Not applicable
3. **The effective date of the rules:**

August 27, 1997
4. **A list of all previous notices appearing in the Register addressing the exempt rule:**

Notice of Proposed Rulemaking: 3 A.A.R. 350, February 7, 1997

Notice of Emergency Rulemaking: 2 A.A.R. 3552, August 9, 1996; 3 A.A.R. 365, February 7, 1997
5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Christopher Kempley, Assistant Chief Counsel, Legal Division

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1200 West Washington Street  
Phoenix, Arizona 85007

Telephone: (602) 542-3402

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6. **An explanation of the rule, including the agency's reasons for initiating the rule, including the statutory citation to the exemption from the regular rulemaking procedures:**

Pursuant to the Federal Communications Act of 1996, local exchange carriers are required to interconnect with any telecommunications provider requesting interconnection. If the companies are unable to agree on the terms and conditions for interconnection, the Act mandates that state commissions mediate or arbitrate these matters, if requested by any party to the negotiations. The Act does not specify the administrative details necessary to effectuate mediation and arbitration procedures. These rules establish state procedures for mediation and arbitration of interconnection agreements.

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Under the Act, telecommunications carriers may request that the state commission arbitrate interconnection agreements during the 135th through the 160th day following the request for negotiations to the local exchange carrier, and the state commission is required to act on the request for arbitration within 9 months of when the request for negotiations was made. Many telecommunications carriers have made requests to negotiate with the local exchange carriers in Arizona. There are currently requests for arbitration pending before this Commission.

Because of the pending requests for arbitration, and the short time-frame within which the Commission must act on those requests, it was necessary for the Commission to originally adopt these rules on an emergency basis. State law indicates that emergency rules expire within 180 days from their issuance. These rules were set to expire January 19, 1997. Because the Commission's Hearing Division is still in the process of arbitrating interconnection issues and because it is highly likely that there will be additional arbitration requests in the future, the rules were extended on an emergency basis for an additional 180 days by Decision No. 59980, dated January 16, 1997.

The Commission forwarded the rules to the office of the Secretary of State for notice of proposed rulemaking and ordered its Hearing Division to schedule a hearing on this matter in accordance with procedure for permanent rulemaking. The hearing was held as scheduled on March 26, 1997. The Commission adopted rules A.A.C. R14-2-1501 through R14-2-1509 on June 12, 1997, in Decision No. 60238.

The Commission has determined that the rules in this Chapter are exempt from the Attorney General certification provisions of the Administrative Procedure Act (A.R.S. § 41-1041) by a court order (*State of Arizona v. Arizona Corporation Commission* 114 Ariz. Adv. Rep. 36 (Ct. App. 1992)).

**7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable.

**8. The summary of the economic, small business, and consumer impact:**

The rulemaking established procedures for arbitrating issues between telecommunications companies that are seeking to agree upon the terms of interconnecting their networks.

Under the Federal Telecommunications Act of 1996, telecommunications companies are required to interconnect their networks on terms that are just and nondiscriminatory so that the public can have "seamless" service regardless of their local telephone company. Should companies reach an impasse in their interconnection negotiations, state commissions are required to arbitrate disputed issues.

Both incumbent and new entrant local exchange carriers, as well as interested 3rd parties, will benefit by knowing the procedures the Commission will follow in resolving disputed issues.

These rules may not result in any increased out-of-pocket cost to the Commission but will result in staff time being devoted to this new function. The rules should not result in any additional cost to other government bodies or political subdivisions unless either chooses to file comments on arbitration decisions. Parties to the arbitration would each be expected to bear their own costs. There are no costs to private persons or consumers. However, these groups will benefit from the added choices of competing telecommunications companies when interconnection agreements are successfully completed.

**9. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

**R14-2-1501. Application of Rules**

No changes.

**R14-2-1502. Definitions**

Subsection (D) has been amended by inserting the phrase "and resale services, as appropriate," after the word "interconnection".

Subsection (F) has been amended by deleting the word "open" before the word "issues", and inserting the word "unresolved" after the word "issues".

**R14-2-1503. Negotiation**

Subsection (A) has been amended by deleting the reference to "A."

Subsection (A) has further been amended by deleting the words "local exchange carrier receiving" and inserting the words "telecommunications carrier initiating" after the word "A" at the beginning of the Section.

Subsection (B) has been amended by deletion of the Section in its entirety.

**R14-2-1504. Mediation**

No changes.

**R14-2-1505. Arbitration**

Subsection (F)(3) was amended by deletion of the words "his/her" and insertion of the words "the arbitrator's" preceding the word "discretion".

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Subsection (F)(4) was amended by deletion of the word "a" before the word "mediator".

**R14-2-1506. Filing and Service of Request for Approval of Interconnection Agreement**

Subsection (C)(2)(b) was amended by insertion of the words "or should not" after the word "should"; insertion of the phrase "in whole or in part," after the words "be adopted,"; insertion of the phrase "in whole or in part" after the phrase "how the agreement"; insertion of the phrase "or does not meet" after the word "meets"; and insertion of the letter "s" onto the word "Communication".

Subsection (C)(2) was further amended by addition of the following:

- d. A party may file a statement with the signed interconnection agreement, indicating that it has executed the agreement under protest and does not waive its right to appeal specified provisions of the agreement that were mandated by Order of the Commission.

Subsection (C)(3) was amended by deletion of the word "sections" and insertion of the word "provisions" after the words "identify which", and insertion of the word "were" preceding the word "arbitrated" in the 2nd sentence.

Subsection (D) was amended by insertion of the phrase "to run" after the word "begin" in the 2nd sentence.

**R14-2-1507. Approval Procedure**

Rule R14-2-1507 was amended by deletion of "," after "arbitrated agreements"; insertion of "," after "negotiated provisions"; and insertion of "," after "negotiated agreements".

The rules are amended by the addition of rules applicable to amendments to the interconnection agreement as new rules R14-2-1508 and R14-2-1509. The following rules were added:

**R14-2-1508. Amendments**

Any amendments to an interconnection agreement shall be filed with the Commission, and if not rejected by the Commission within 30 days of filing, such amended agreement will become effective.

1. For negotiated amendments, including amendments resolved by Commission or private mediation, Commission rejection shall be limited to discrimination against nonparty telecommunications carriers, lack of consistency with the public interest, convenience, and necessity or lack of consistency with applicable state law requirements.
2. For amendments resolved through arbitration, whether by the Commission or private arbitrator, Commission rejection shall be limited to failure to meet any of the applicable specific requirements of 47 U.S.C. 251, including any applicable Federal Communications Commission regulations.

**R14-2-1509. Replacement or Subsequent Interconnection Agreements**

Replacement or subsequent interconnection agreements are subject to the provisions of this Article.

**10. A summary of the principal comments and the agency response to them:**

**A. R14-2-1501. Application of Rules**

**Issue:** U S WEST contended that proposed rule R14-2-1501 should be revised to specifically limit the scope of the Commission's jurisdiction and powers to be as authorized by the Act. U S WEST claimed that the rules discuss the Commission's authority in broader terms than the authority granted by the Act. Staff, AT&T, and MCI disagree, claiming that the rule as proposed already limits authority to that mandated by the Act.

**Evaluation:** We concur with the recommendations of Staff, AT&T, and MCI not to amend the provision.

**Resolution:** No amendment to the rule is warranted.

**B. R14-2-1502. Definitions**

**Issue:** Whether the definition of Interconnection Agreement is sufficiently expansive.

**Evaluation:** The definition of Interconnection Agreement as proposed indicates that the agreement is to set forth the terms and conditions under which interconnection will be provided. The Interconnection Agreement also should set forth the terms and conditions under which services are to be provided at wholesale for the competing carrier to resell to the end user.

**Resolution:** Subsection (D) should be amended by inserting the phrase "and resale services, as appropriate," after the word "interconnection".

**C. R14-2-1503. Negotiation**

**Proposed rule R14-2-1503(A)**

**Issue:** R14-2-1503(A) of the proposed rule requires that the local exchange carrier receiving a request to negotiate should notify the Commission when a request is received. U S WEST requested that notification be provided by the carrier initiating the request to negotiate. U S WEST claimed that confusion occurs regarding whether a formal request to negotiate has been made, as certain carriers "have casually mentioned" the need to begin negotiations, and carriers do not always specify in which states they intend to operate and therefore desire to begin negotiations. Requiring the requesting party to notify the

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Commission when appropriate would eliminate the confusion. Staff agreed that it may be more appropriate for the requesting provider to notify the Commission. AT&T and MCI supported the rule as originally drafted by Staff.

**Evaluation:** To avoid possible confusion whether a formal request for negotiation has occurred, the obligation to provide notice should be placed upon the requesting carrier.

**Resolution:** In R14-2-1503(A), the phrase "local exchange carrier receiving" should be deleted and replaced with "telecommunications carrier initiating".

**Proposed rule R14-2-1503(B)**

**Issue:** U S WEST stated that proposed subsection (B), which requires a 90-day negotiation status update, should be deleted. U S WEST requested the deletion based upon 2 assertions: that negotiation status is confidential; and that the status information is meaningless. Staff did not oppose the deletion if the subsection does not provide meaningful information. AT&T and MCI supported the rule as originally drafted, claiming that the status check would provide encouragement for the parties to negotiate. MCI also stated that any confidential information could be provided subject to a protective order.

**Evaluation:** Regarding R14-2-1503(B), the Commission does not need to be apprised of negotiations status. The parties are free to negotiate, and their negotiations are not subject to deadlines or other constraints imposed by the Commission. The Commission becomes involved if a party requests arbitration or a negotiated agreement is submitted for approval. We would not expect that providing a status check would affect the progress of negotiations.

**Resolution:** R14-2-1503(B) should be deleted in its entirety and R14-2-1503(A) should be renumbered as R14-2-1503.

**D. R14-2-1504. Mediation**

**Proposed rule R14-2-1504(B)**

**Issue:** U S WEST proposed that R14-2-1504(B) be modified to require "that an independent, neutral 3rd party be appointed as mediator, rather than appointing an employee of the Commission". U S WEST proposed that the Commission should propose lists of potential mediators from private arbitration and mediation organizations. A party would be free to propose a Commission employee as mediator. Staff, AT&T, and MCI supported the proposed rule. They indicated that the rule addresses situations in which the parties request mediation by the Commission. The parties are free to pursue private mediation independently of the Commission.

**Evaluation:** The Commission has access to individuals who are knowledgeable in telecommunications and are independent of the negotiating carriers. If the Commission's assistance is sought, it is appropriate for a Commission employee to act as mediator. If the parties do not desire mediation by a Commission employee, they may pursue private mediation.

**Resolution:** No amendment to R14-2-1504(B) is warranted.

**Proposed rule R14-2-1504(D)(6)**

**Issue:** U S WEST stated that as mediation and arbitration may occur concurrently, R14-2-1506(D)(6) should be modified to avoid the appearance of a conflict. U S WEST proposed that the sentence "A mediator shall not disclose any information concerning the mediation." be added to this subsection. Staff, AT&T, and MCI opposed U S WEST's proposed modification. They claimed that the rule already addresses confidentiality, and U S WEST's proposed language is too broad as it would prohibit disclosure of any information, including the fact that the mediator is currently handling the matter.

**Evaluation:** The rule adequately addresses confidentiality. A mediator should be permitted to indicate involvement in a particular mediation to prevent a possible conflict if asked to participate in arbitration.

**Resolution:** No amendment to R14-2-1504(D)(6) is warranted.

**E. R14-2-1505. Arbitration**

**Proposed rule R14-2-1505(F)(1)**

**Issue:** U S WEST claimed that arbitration would work better if the dispute were arbitrated by professional arbitrators from private arbitration organizations. U S WEST proposed that, upon receipt of a petition for arbitration, the Commission should submit lists of private arbitrators from which the parties may choose, or the parties may submit the name of an agreed upon arbitrator. If the parties are unable to agree upon the selection of a non-Commission employee as an arbitrator, a Hearing Officer would be appointed.

Staff, AT&T, and MCI dispute the proposed amendment. They agree that Commission Hearing Officers acting as arbitrators have the knowledge and familiarity with the issues to propose a timely resolution. Staff also indicates that Hearing Officers understand the open meeting process. In addition, Hearing Officers would be more sensitive to the statutory deadlines and the FCC's usurpation of the Commission's jurisdiction if a timely determination is not made.

**Evaluation:** In its exceptions to Proposed Order and Proposed Arbitration and Mediation Rules, filed July 16, 1996, U S WEST presented this same argument. The Commission rejected the argument in Decision No. 59762. The Commission's Hearing Officers have knowledge of the issues; an understanding of how resolutions may affect future issues, such as rate-making; an understanding of the open meeting process; and an understanding of the interplay of federal and state jurisdictions. It is appropriate for arbitrations to be conducted by Commission Hearing Officers.

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**Resolution:** No amendment to R14-2-1505(F)(1) is warranted.

**Proposed rule R14-2-1505(F)(3)**

**Issue:** The proposed rule refers to the arbitrator's discretion as "his/her".

**Evaluation:** Although somewhat repetitive, it would be less awkward and gender neutral, rather than attempting to be gender inclusive, to refer to the discretion as belonging to the arbitrator.

**Resolution:** Rule R14-2-1505(F)(3) shall be amended to delete "his/her" and insert "the arbitrator's" prior to the word "discretion".

**Proposed rule R14-2-1505(F)(4)**

**Issue:** U S WEST proposed deletion of this rule<sup>1</sup>. U S WEST claimed that the rule, which permits the arbitrator to obtain assistance of Commission staff who have not mediated the interconnection agreement between the parties, undermines neutrality. U S WEST states that, since the Commission approves the interconnection agreement, no staff member who advises the Commission should be associated with the arbitration process. In the alternative, U S WEST proposes that only information regarding mediation which would be admissible pursuant to federal or Arizona Rules of Evidence or stipulated to by the parties would be considered.

Staff, AT&T, and MCI stated that the rule's present prohibition against consultation with Staff which has mediated the interconnection agreement is sufficient to preserve the parties' confidentiality. They claimed that the arbitrator should be able to seek Staff assistance if needed, especially given the limited time-frames for resolving arbitration issues.

The proposed rule also refers to Staff members acting as "a" mediator.

**Evaluation:** The rule states that Staff which has mediated the interconnection agreement will not be consulted in the arbitration process. The rule as presently written resolves any issues of confidentiality and conflict of interest.

The alternative proposal is not relevant, as it refers to information obtained during mediation. Such a situation would not occur, as the rule bars assistance by Staff who have participated in mediation.

We will revise the sentence stated above regarding Staff members.

**Resolution:** Rule R14-2-1505(F)(4) will be amended to delete "a" after the phrase "acted as". No other amendment to rule R14-2-1505(F)(4) is warranted.

**Proposed rule R14-2-1505(G)**

**Issue:** U S WEST stated that the conduct of hearings should meet minimum due process standards, and therefore rule R14-2-1505(G) should be amended to require: testimony under oath or affirmation; cross-examination of witnesses; and the federal or Arizona Rules of Evidence to be used as guides to the admissibility of evidence. Staff, AT&T, and MCI objected to U S WEST's proposed amendment. They stated that the arbitrator should have discretion to determine the necessary level of formality, and the Act does not require any specific level of procedural formality. They claimed that the purpose of arbitration is to streamline the process and resolve issues more informally and efficiently than through trial.

**Evaluation:** Administrative procedures provide flexibility in the conduct of hearings. Arbitration, especially as conducted under the strict time requirements of the Act, necessitate the use of streamlined and efficient procedures. In addition, at public comment, U S WEST admitted that all arbitration hearings had been conducted in compliance with due process standards. Accordingly, the Commission will not require arbitration hearings to be conducted in compliance with evidentiary procedures applicable to trials.

**Resolution:** No amendment to rule R14-2-1505(G) is warranted.

**F. R14-2-1506. Filing and Service of Request for Approval of Interconnection Agreement**

**Issue:** U S WEST has proposed an amendment to R14-2-1506(C)(2)(b) so that a party may indicate its opinion whether an agreement should or should not be adopted. U S WEST also requested that a party be able to submit a statement indicating that it executed the agreement under protest and does not waive its right to appeal the issues which were mandated by order of the Commission.

Staff, AT&T, and MCI claimed that a party already is able to take the action which U S WEST would like to specify by rule. AT&T indicated that U S WEST has filed such statements under the present rules. Staff had no objection to including the language requested by U S WEST, while AT&T and MCI claimed that the proposed amendment is not necessary, nor is it appropriate. MCI further asserted that the Commission should hold hearings to approve interconnection agreements. At the hearing, the parties would have an opportunity to provide comments on whether the agreement meets the applicable provisions of the Act.

**Evaluation:** While it is true that U S WEST has submitted statements which specify which provisions of the interconnection agreement it believes comply with the Act, and which do not, the rule as presently drafted does not provide for such a state-

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1. In its heading, U S WEST refers to R14-2-1505(E)(4) but the discussion is regarding R14-2-1505(F)(4).

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ment. It is appropriate to amend the rule to permit a party to state its position regarding compliance with the Act, including whether certain provisions comply while others do not. In addition, the rules require the parties to execute an interconnection agreement which incorporates arbitrated provisions. A party should be able to indicate for the record that it signed under protest, and that it does not waive any right to appeal specified provisions which were included in the agreement pursuant to the arbitration order. The party should be required to indicate with specificity which of the arbitrated provisions it has agreed to under protest.

The proposed amendment encompasses 2 separate issues and should be separated in the rule.

R14-2-1506 (C)(2)(b) should be amended to allow a party to indicate whether the agreement, in whole or in part, should or should not be adopted, and whether the agreement, in whole or in part, meets or does not meet the requirements of the Act. R14-2-1506(C)(2)(d) should be added to permit a party to file a statement indicating that it signed the interconnection agreement under protest, and preserves its right to appeal specified arbitrated provisions of the agreement.

It is not necessary to have a separate hearing on the issue of whether the interconnection agreement meets the terms of the Act, as requested by MCI. The Commission can refer to the arbitration Order and has input of the Hearing Division as to whether the provisions of the agreement interpret the arbitration Order so that compliance with the Act is maintained.

The reference in R14-2-1506(C)(2)(b) to "Federal Communication Commission" should be amended to refer to the correct name, "Federal Communications Commission". R14-2-1506(C)(3) should be amended for consistency, so that portions of interconnection agreements are referred to as "provisions" rather than "sections", and the phrase "which arbitrated" is replaced with "which were arbitrated". A reference in R14-2-1506(D) to the statutory timeline beginning to run should be added to clarify the counting down of a time period.

**Resolution:** R14-2-1506(C)(2)(b) should be amended to insert "or should not" after "should"; insert "in whole or in part" after "be adopted"; insert "in whole or in part," after the phrase "how the agreement"; insert "or does not meet" after "meets", and inserting "s" onto "Communication".

R14-2-1506(C)(2)(d) should be added, which states "A party may file a statement with the signed interconnection agreement, indicating that it has executed the agreement under protest and does not waive its right to appeal specified provisions of the agreement that were mandated by Order of the Commission."

R14-2-1506(C)(3) should be amended to delete "sections" and insert "provisions", and insert "were" between "which" and "arbitrated".

R14-2-1506(D) should be amended to insert "to run" after "begin".

**G. R14-2-1507. Approval Procedure**

**Issue:** R14-2-1507(B) requires grammatical correction, as its clauses combine issues incorrectly.

**Evaluation:** It is necessary to delete the comma after "arbitrated agreements" and add commas before and after the phrase "or within 90 days of request for approval of negotiated agreements".

**Resolution:** R14-2-1507(B) is amended to delete "," after "arbitrated agreements"; insert "," after "negotiated provisions"; and insert "," after "negotiated agreements".

**H. R14-2-1508. Amendments**

**Issue:** The rules do not address whether the Commission retains jurisdiction over amendments to an interconnection agreement or whether amendments must be approved by the Commission. The issue has repeatedly arisen in review of proposed interconnection agreements, and has been resolved by the Commission.

**Evaluation:** It is appropriate to add a rule which states that the Commission retains jurisdiction over amendments to an interconnection agreement and how amendments are approved, consistent with actual practice. The standard for negotiated amendments, including amendments resolved by the Commission or private mediation, should be the same as for negotiated interconnection agreements. The standard for amendments which have been arbitrated, whether by the Commission or private arbitrator, should be the same as the standard for arbitrated provisions of an interconnection agreement.

**Resolution:** In order to address the issue of amendments and to be consistent with actual practice before the Commission, the following rule should be added:

**R14-2-1508. Amendments**

Any amendments to an interconnection agreement shall be filed with the Commission and if not rejected by the Commission within 30 days of filing, such amended agreements will become effective.

1. For negotiated amendments, including amendments resolved by Commission or private mediation, Commission rejection shall be limited to discrimination against nonparty telecommunications carriers, lack of consistency with the public interest, convenience, and necessity or lack of consistency with applicable state law requirements.
2. For amendments resolved through arbitration, whether by the Commission or private arbitrator, Commission rejection shall be limited to failure to meet any of the applicable specific requirements of 47 U.S.C. 251, including any applicable Federal Communications Commission regulations.

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**I. R14-2-1509. Replacement or Subsequent Interconnection Agreements**

**Issue:** Rather than amending an interconnection agreement, the parties may choose to replace the agreement with a revised version. In addition, interconnection agreements have a specified duration. The current rules do not address replacement or subsequent interconnection agreements.

**Evaluation:** Although we think it is clear that replacement or subsequent interconnection agreements are subject to the provisions of this Article, clarification in a rule is appropriate.

**Resolution:** The following rule should be added:

R14-2-1509. Replacement or Subsequent Interconnection Agreements

Replacement or subsequent interconnection agreements are subject to the provisions of this Article.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:  
Not applicable.
12. Incorporations by reference and their location in the rules:  
Not applicable.
13. Was this rule previously adopted as an emergency rule?  
Yes.  
3 A.A.R. 365, February 7, 1997; and 2 A.A.R. 3552, August 9, 1996.
14. The full text of the rules follows:

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**ARTICLE 15. ARBITRATION AND MEDIATION**

**Section**

- R14-2-1501. Application of Rules  
R14-2-1502. Definitions  
R14-2-1503. Negotiation  
R14-2-1504. Mediation  
R14-2-1505. Arbitration  
R14-2-1506. Filing and Service of Request for Approval of Interconnection Agreement  
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R14-2-1508. Amendments  
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**ARTICLE 15. ARBITRATION AND MEDIATION**

**R14-2-1501. Application of Rules**

These rules govern procedures mandated by the Telecommunications Act of 1996, 47 U.S.C. 252, regarding the mediation, arbitration, review and approval of interconnection agreements.

**R14-2-1502. Definitions**

- A. "Arbitration" means an alternative dispute resolution process in which the Arizona Corporation Commission decides the matter in dispute after the parties have had an opportunity to present their respective positions.
- B. "Arizona Corporation Commission" or "Commission" means the regulatory agency of the state of Arizona that has jurisdiction over public service corporations operating in Arizona.
- C. "Duty to Negotiate in Good Faith" means that parties meet and confer at reasonable times and places with minds open to persuasion and with an eye toward reaching agreement on mandatory subjects of bargaining.
- D. "Interconnection Agreement" means a formal agreement between any telecommunications carriers providing or intending to provide telecommunications services in Arizona, setting forth the particular terms and conditions under which inter-

connection and resale services, as appropriate, will be provided.

- E. "Mediation" means a voluntary alternative dispute resolution process in which a neutral 3rd party assists the parties in reaching their own settlement. The mediator does not have the power to impose a resolution. The role of the mediator and the goal of the process is to help the parties achieve their own resolution.
- F. "Petition for arbitration" means the petition requesting arbitration of issues unresolved in the negotiation of an interconnection agreement.
- G. "Petitioner" means the party to the negotiation that files the petition for arbitration with the Commission.
- H. "Request for negotiation" means a formal request made by any telecommunications carrier providing or intending to provide telecommunications services in Arizona to another telecommunications carrier to negotiate an interconnection agreement.
- I. "Respondent" or "responding party" means the nonpetitioning party to the request for arbitration.

**R14-2-1503. Negotiation**

A telecommunications carrier initiating a request to negotiate shall notify the Commission when a request for negotiation has been made pursuant to 47 U.S.C. 252. The notification shall include the names of the negotiating parties and the date of the request. The notification shall be served on all parties to the negotiation.

**R14-2-1504. Mediation**

- A. Any party negotiating an agreement under 47 U.S.C. 252 may, at any point in the negotiation, ask the Commission to participate in the negotiation and to mediate any differences arising in the course of the negotiation.
- B. If a party requests mediation by the Commission, a non-Hearing Division employee of the Commission will be appointed to act as mediator.
- C. A request for mediation shall contain a brief statement of the nature of the dispute and the names, addresses, and telephone

and telefax numbers of the parties or their representatives. Copies of the request shall be served on all parties to the negotiation.

- D. The mediator shall have discretion to regulate the course of the mediation, including scheduling of mediation sessions, in consultation with the parties. The following general procedures apply:

1. The mediator will not impose a settlement but can offer proposals for settlement;
2. The mediator may meet individually with the parties or attorneys during mediation;
3. Only the parties to the negotiation may attend the mediation session or sessions, unless all parties consent to the presence of others;
4. Parties shall provide the mediator with a brief statement of position and relevant background information prior to the 1st mediation session. The mediator may ask for this information to be supplemented;
5. The mediator will not provide legal advice to the parties, nor will any mediator's statements as to law or policy be binding on the Commission, unless later adopted by the Commission;
6. The mediation process is confidential, to the extent permitted by law. No stenographic record will be kept.

- E. All parties participating in a requested Commission mediation have a duty to negotiate in good faith. The mediator may terminate the mediation if it appears that the likelihood of agreement is remote or if a party is not participating in good faith, or for other good cause. Ordinarily, a mediation should not be terminated prior to the completion of at least 1 mediation session.

**R14-2-1505. Arbitration**

**A. Filing and Service of a Petition for Arbitration**

1. During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under 47 U.S.C. 252(b)(1), any party to the negotiation may petition the Arizona Corporation Commission to arbitrate any open issues. The petition shall request arbitration of all issues which are unresolved at the time the petition is filed. Parties may continue to negotiate or otherwise resolve the disputed issues after arbitration is requested. The pendency of a mediation shall not bar a party from petitioning the Commission for arbitration.
2. An original and 10 copies of a petition for arbitration shall be filed with the Commission. The petitioner shall deliver to the respondent a complete copy of the petition and all accompanying documentation on the same day that the petition is filed with the Commission.

**B. Contents of Petition and Documentation**

1. A petition for arbitration shall clearly set forth the date upon which the original request for negotiation was received and the dates 135 days, 160 days, and 9 months thereafter.
2. A petition for arbitration shall be accompanied by all relevant documentation concerning the unresolved issues, the position of each of the parties with respect to those issues, and any other issue discussed and resolved by the parties. Relevant documentation includes, but is not limited to, the following:
  - a. A brief or other written statement addressing the disputed issues. The brief should address, in addition to any other matters, how the parties' positions and any conditions requested meet or fail to meet the requirements of 47 U.S.C. 251; any applicable Federal Communication Commission regulations; and

any applicable regulation, order, or policy of this Commission.

- b. Where prices are in dispute, the petitioner shall submit its proposed rates or charges and related supporting materials.
- c. Any conditions which petitioner requests be imposed.
- d. A proposed schedule for implementation of the terms and conditions of the agreement.
- e. The petition may include a recommendation as to any information which should be requested from the parties by the arbitrator pursuant to 47 U.S.C. 252(b)(4)(B). The recommendation should state why the information is necessary for the arbitrator to reach a decision on the unresolved issues.
- f. A proposed interconnection agreement.
- g. Any other documents relevant to the dispute, including copies of all documents in their possession or control on which they rely in support of their positions or which they intend to present at the arbitration.

**C. Opportunity to Respond**

The respondent may respond to the petition for arbitration within 25 days of the filing of the petition. The respondent shall respond to all the specific issues raised in the petition for arbitration.

**D. Confidentiality**

Petitions, responses, accompanying material, and any documents provided to the Commission pursuant to a request under 47 U.S.C. 252(b)(4)(B) may be subject to the Arizona public disclosure law. However, a petition or response may include a request for issuance of a protective order.

**E. Discovery**

1. Parties must cooperate in good faith in the voluntary, prompt, and informal exchange of all documents and other information relevant to the disputed issues, subject to claims of privilege or confidentiality. Parties must exchange copies of all documents relevant to the dispute, including those on which they rely in support of their position or which they intend to present at the arbitration.
2. At the time of filing of a petition for arbitration, or a response, the petitioner may file discovery requests on the responding party, with an information copy provided to the arbitrator.
3. Discovery requests not responded to may be submitted to the arbitrator, with a request that the arbitrator order the discovery pursuant to 47 U.S.C. 252(b)(4)(B). The request should include an explanation of why the information is necessary to reach a decision on the unresolved issues.
4. Failure to cooperate in discovery may be considered as a failure to negotiate in good faith.

**E. Appointment and Authority of Arbitrator**

1. Arbitrations will be conducted by Commission Hearing Officers.
2. The arbitrator will exercise all authority necessary to conduct the arbitration, subject to the provisions of these rules.
3. The arbitrator may, in the arbitrator's discretion and to the extent practical, consolidate proceedings under 47 U.S.C. 252 in order to reduce administrative burdens on telecommunications carriers, other parties to the proceedings, and the Commission.
4. The arbitrator may request the assistance of members of the Commission staff in reviewing the petition and accompanying materials, to the extent such staff mem-



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bers have not acted as mediator with respect to the same interconnection agreement between the same parties.

5. The arbitrator will be authorized to recommend to the Commission a resolution of the disputed issues and any appropriate conditions to be imposed in the form of a Recommended Opinion and Order. The Commission will issue a final decision not later than 9 months after the date on which the local exchange carrier received the request to negotiate.

**G. Arbitration Proceeding**

Arbitration allows an opportunity for parties to present their positions. However, arbitration does not require sworn testimony or cross-examination of witnesses. Arbitration proceedings will be conducted pursuant to procedures established by the Hearing Officer.

**H. Fees and Costs**

Each party shall be responsible for bearing its own fees and costs.

- I. Any person wishing to comment on the Recommended Opinion and Order may do so by filing written comments with the Commission prior to the Commission's final decision.

**R14-2-1506. Filing and Service of Request for Approval of Interconnection Agreement**

- A. An interconnection agreement shall be submitted to the Commission for approval under 47 U.S.C. 252(e) within 30 calendar days of the issuance of the Commission's final decision on the petition for arbitration, in the case of arbitrated agreements, or, in the case of negotiated agreements, within 30 calendar days of the execution of the agreement. The 30-day deadline may be extended by the Commission for good cause.
- B. An original and 10 copies of requests for approval shall be filed with the Docket Control section of the Commission. Any party to the agreement may submit a request for approval. Unless filed jointly by all parties, the request for approval and any accompanying materials should be served on the other signatories on the day of the filing.
- C. A request for approval shall include the documentation set out in this paragraph. The materials can be filed jointly or separately by the parties to the agreement but should all be filed by the 30-day deadline set out in subsection (A).
  1. **Negotiated Agreements.** The following documentation must be filed:
    - a. A complete copy of the signed agreement, including any attachments or appendices.
    - b. A brief or memorandum summarizing the main provisions of the agreement, setting forth the party's position as to why the agreement should be adopted, including a statement as to why the agreement does not discriminate against nonparty telecommunications carriers, is consistent with the public interest, convenience, and necessity, and is consistent with applicable state law requirements.
  2. **Arbitrated Agreements.** The following documentation must be filed:
    - a. A complete copy of the signed agreement, including any attachments or appendices.
    - b. A brief or memorandum summarizing the main provisions of the agreement, setting forth the party's position as to why the agreement should or should not be adopted, in whole or in part, and a statement explaining how the agreement, in whole or in part,

meets or does not meet each of the applicable specific requirements of 47 U.S.C. 251, including any applicable Federal Communications Commission regulations.

- c. Complete and specific information to enable the Commission to make the determinations required by 47 U.S.C. 252(d).
- d. A party may file a statement with the signed interconnection agreement indicating that it has executed the agreement under protest and does not waive its right to appeal specified provisions of the agreement that were mandated by Order of the Commission.

**3. Combination Agreements (Arbitrated/Negotiated)**

Any agreement containing both arbitrated and negotiated provisions shall include the foregoing materials as appropriate, depending on whether a provision is negotiated or arbitrated. The memorandum should clearly identify which provisions were negotiated and which were arbitrated.

- D. Any filing not containing the required materials will be rejected and must be refiled when complete. The statutory timelines will not begin to run until a request has been properly filed.
- E. Agreements containing both arbitrated and negotiated provisions will be subject to the 30-day deadline specified in 47 U.S.C. 252(e)(4).

**R14-2-1507. Approval Procedure**

- A. Unless otherwise ordered by the Commission, a hearing will not be held for a request for approval of an interconnection agreement.
- B. The Commission will enter an order approving or rejecting the interconnection agreement within 30 days of request for approval of arbitrated agreements and agreements containing both arbitrated and negotiated provisions, or within 90 days of request for approval of negotiated agreements, with written findings as to any deficiencies.

**R14-2-1508. Amendments**

Any amendments to an interconnection agreement shall be filed with the Commission and, if not rejected by the Commission within 30 days of filing, such amended agreements will become effective.

1. For negotiated amendments, including amendments resolved by Commission or private mediation, Commission rejection shall be limited to discrimination against nonparty telecommunications carriers, lack of consistency with the public interest, convenience, and necessity, or lack of consistency with applicable state law requirements.
2. For amendments resolved through arbitration, whether by the Commission or private arbitrator, Commission rejection shall be limited to failure to meet any of the applicable specific requirements of 47 U.S.C. 251, including any applicable Federal Communications Commission regulations.

**R14-2-1509. Replacement or Subsequent Interconnection Agreements**

Replacement or subsequent interconnection agreements are subject to the provisions of this Article.